

## **APPENDIX A**

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### **CONSULTATION AND COMPLIANCE**

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## APPENDIX A CONSULTATION AND COMPLIANCE

This appendix summarizes the California Department of Water Resources' (DWR) consultation with other government agencies and scoping efforts through the Alternative Licensing Procedures (ALP) Collaborative process that have been conducted to date.

**Table A-1. Plenary and Work Group meeting dates.**

<b>Collaborative Group</b>	<b>Meeting Dates</b>
Plenary Group	<p>2000: November 16</p> <p>2001: January 18, February 28, March 28, May 1, June 11, July 17, August 30, September 24, November 1, December 11</p> <p>2002: January 28, February 25, March 28, April 23, May 21, June 25, July 23, August 20, September 24, October 22, November 19</p> <p>2003: January 7, January 28, February 25, March 25, May 20, July 29, September 23, October 28, December 16</p> <p>2004: January 27, March 23, May 18</p>
Environmental Work Group	<p>2000: December 7</p> <p>2001: January 23, February 27, March 20, April 18, May 23, July 25, August 22, September 26, November 28</p> <p>2002: January 29, March 7, March 27, April 24, May 22, June 26, July 24, August 21, September 25, November 20, December 11</p> <p>2003: January 29, February 19, March 26, April 23, May 21, June 25, July 30, August 27, September 24, October 29, November 19, December 17</p> <p>2004: January 28, February 25, March 24, April 28, May 19, June 23, July 28, August 25, September 29</p>
Recreation and Socioeconomics Work Group	<p>2000: December 7</p> <p>2001: January 25, February 22, March 22, April 19, May 24, June 28, July 26, August 23, October 25, December 6</p> <p>2002: January 29, February 28, March 26, April 25, June 27, September 26, November 21</p> <p>2003: January 16, February 27, March 27, April 24, May 22, June 26, July 31, August 28, September 25, October 16, October 30, November 20, December 18</p> <p>2004: January 29, February 24, March 25, May 20, June 24, July 22</p>
Cultural Resources Work Group	<p>2001: March 27, April 17, May 22, June 26, July 24, August 28, September 25, October 23, November 27</p> <p>2002: January 29, March 19, June 18, September 17, November 12</p> <p>2003: February 18, April 15, May 13, June 17, July 22, August 19, September 16, October 21</p> <p>2004: February 17, April 20, July 20, December 7</p>

**Table A-1. Plenary and Work Group meeting dates.**

<b>Collaborative Group</b>	<b>Meeting Dates</b>
Land Use, Land Management, and Aesthetics Work Group	<p>2001: March 13, April 10, May 15, June 12, July 10, August 14, October 9, November 13</p> <p>2002: January 31, February 19, March 25, April 22, June 24, August 19, October 21, December 9</p> <p>2003: February 24, March 24, April 21, May 19, June 23, July 28, August 25, September 22, October 27, November 17, December 15</p> <p>2004: January 26, February 23, March 22, May 17, July 26, August 23, September 20</p>
Engineering and Operations Work Group	<p>2001: March 1, April 5, April 26, May 25, June 25, July 31, November 16, December 5</p> <p>2002: January 25, March 1, April 26, May 24, June 28, September 27, October 25, November 22</p> <p>2003: January 10, January 31, February 21, March 28, April 25, May 30, June 27, August 1, August 29, September 26, October 31, December 19</p> <p>2004: January 30, February 27, March 26, May 21</p>

Source: DWR

**Table A-2. Scoping and history of the collaborative process.**

<b>Date/Timeframe</b>	<b>Relicensing Activity</b>
October 1999	DWR sent out informational mailer about relicensing of the Oroville Facilities to known and potentially interested parties.
June 29, 2000	A public meeting was held to present and consider use of the ALP.
July 13, 2000	DWR distributed information and requested comments on the proposed use of the ALP. A copy of a draft Communications Protocol, outlining how communications would be facilitated among the Federal Energy Regulatory Commission (FERC), DWR, and other participants in the relicensing process, was also provided for review and comment.
Fall 2000	DWR held meetings and discussions with State and federal resource agencies, and contacted local federally recognized Indian tribes. Presentations were made at formal meetings of local governmental bodies and the proposed relicensing process was discussed with other local organizations. DWR also met informally with other nongovernmental organizations (NGOs).
November 15, 2000	DWR held a follow-up meeting with the public to discuss specifics of the ALP, including the framework, the draft Communications Protocol, and the ground rules for participation in the relicensing collaborative process.
November 16, 2000	DWR hosted a Plenary Group kickoff meeting to begin the collaborative process. Sixty-three stakeholders attended the meeting and agreed to follow the participatory ground rules and support an ALP process involving a three-tiered "Collaborative" that included a Plenary Group, resource-specific Work Groups, and issue-specific Task Forces.
January 11, 2001	DWR's formal <i>Request for Alternative Licensing Procedures to Include an Applicant Prepared Environmental Assessment</i> received approval from FERC (as allowed under FERC's Final Rule issued on October 29, 1997, Docket No. RM 95-116-000; Order No. 596).
January 2001	DWR distributed an Initial Information Package (IIP) as part of the ALP. The purpose of the IIP was to acquaint resource agencies and the public with the Oroville Facilities and the environmental resources potentially affected by current and future project operations. The IIP provided basic, comprehensive information about the facilities and their influence on the surrounding environment and resources. In addition, it identified resource areas where additional information may be needed to make informed and responsible decisions about future project operations.
May 2001	The process protocols were finalized following extensive input and review by relicensing participants. The process protocols provide a framework for communication, cooperation, and consultation among all relicensing participants throughout the relicensing process.
January–July 2001	The Collaborative Work Groups identified and refined issue statements for inclusion in Scoping Document 1 (Draft SD1).

**Table A-2. Scoping and history of the collaborative process.**

Date/Timeframe	Relicensing Activity
September 2001	DWR issued Draft SD1, which initiated formal scoping. The purpose of the document was to identify potential issues, initiate study and evaluation programs, and better define the expected analytical approaches of the environmental documents being prepared for relicensing-related decision-making. SD1 supported the development of either two separate environmental documents or a single joint National Environmental Policy Act (NEPA)/California Environmental Quality Act (CEQA) document. It also provided the CEQA Notice of Preparation, an important building block in DWR's preparation of an Environmental Impact Report (EIR) for relicensing. Final SD1 (which includes comment letters on SD1) can be viewed on the relicensing website, <a href="http://orovillerelicensing.water.ca.gov">http://orovillerelicensing.water.ca.gov</a> .
October 29, 2001, and October 30, 2001	Public scoping meetings were held in the Cities of Oroville and Sacramento, respectively. The purpose of the meetings was to receive input from any parties interested in the relicensing process, and to gather information and identify issues regarding specific aspects of the Oroville Facilities relicensing. More than 100 people signed in at the meetings and public statements were provided in person by 21 individuals representing a variety of interested parties. Any person who was unable to attend a meeting was encouraged to submit written comments and information to the licensee by November 26, 2001. A follow-up field tour of the facilities was conducted for all interested parties.
2001 and 2002	The Work Groups further developed issue sheets, identifying available and needed information to inform decision-makers regarding potential effects of the Oroville Facilities. The issue sheets formed the basis for development of Study Plans; eventually, 71 Study Plans were developed and approved.
Throughout 2002	DWR, agencies, federally recognized Indian tribes, NGOs, and interested parties continued their involvement in the relicensing process through participation in ongoing collaborative efforts, including the review of preliminary study results and development of potential resource actions.
September 20, 2002	DWR issued Scoping Document 2 and Amended Notice of Preparation (SD2). SD2 reflected the progress made since September 2001 in working with resource agencies, NGOs, and other interested parties to identify issues and initiate Study Plans. SD2 also fulfilled requirements allowing DWR to prepare a Preliminary Draft Environmental Assessment (PDEA) that complies with NEPA and adequately supports the FERC decision-making process. SD2 and comment letters can be viewed on the relicensing website, <a href="http://orovillerelicensing.water.ca.gov">http://orovillerelicensing.water.ca.gov</a> .
Throughout 2003	Relicensing participants continued collaboration to develop and implement Study Plans, and to begin development of preliminary protection, mitigation, and enhancement (PM&E) measures.
April 30, 2004	A PDEA Progress Summary was circulated for review by agencies and interested parties. A list of parties commenting on the PDEA Progress Summary is provided in Table 4.1-4 in Chapter 4.0 of this PDEA.
Throughout 2004	Settlement agreement negotiations continue through 2004 and as needed into 2005 to achieve settlement on multiple issues prior to NEPA document completion by FERC. The goal is to have a settlement agreement to submit to be analyzed as the preferred alternative in the FERC NEPA EIS.

Source: DWR

**Table A-3. Relicensing compliance.**

Regulation/ Requirement	Compliance Status
Water Quality Certification (Section 401 of the federal Clean Water Act)	The State Water Resources Control Board (SWRCB) has been involved throughout the collaborative process in reviewing Study Plan design and implementation and providing guidance on analyses needed to support the Section 401 application and certification process. The application for Section 401 certification will be filed within 60 days of FERC's issuance of the Ready for Environmental Analysis (REA) notice. The SWRCB is then expected to issue Section 401 certification within 1 year of submittal of the application for Section 401 certification.
Fishway Prescriptions (Section 18 of the Federal Power Act [FPA])	The U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration (NOAA) Fisheries have been working with DWR and other interested parties to develop appropriate Section 18 conditions. The agencies are expected to file final Section 18 conditions (or preliminary conditions with a schedule for final conditions) in late 2005 to early 2006.
Federal Land Management Conditions (Section 4(e) of the FPA)	The U.S. Bureau of Land Management (BLM) and U.S. Forest Service (USFS) have authority over lands occupied by the Oroville Facilities and have been involved throughout the collaborative process. BLM and USFS are expected to issue Section 4(e) conditions in late 2005 to early 2006.
Section 7 of the Federal Endangered Species Act (FESA)	Species protected under FESA and potentially affected by the Proposed Action were identified early in the relicensing process through consultation with NOAA Fisheries and USFWS. DWR plans to develop a draft Biological Assessment (BA) for submission to FERC, USFWS, and NOAA Fisheries. FERC is expected to subsequently submit its draft BA to USFWS and NOAA Fisheries in 2005, and USFWS and NOAA Fisheries will issue a final Biological Opinion (BO) in 2006.
Recommendations under Section 10(j) of the FPA	USFWS, NOAA Fisheries, and the California Department of Fish and Game (DFG) are expected to issue recommendations regarding fish and wildlife mitigation measures. FERC will decide whether to adopt these recommendations prior to license issuance.
Section 106 of the National Historic Preservation Act (NHPA)	FERC is responsible for ensuring that the Oroville Facilities are compliant with the NHPA. FERC is also required to consult with the California Office of Historic Preservation (OHP); other land management agencies where the undertaking may have an effect; and federally recognized Indian tribes that may have cultural affiliations with affected properties. Representatives from key agencies and entities involved in historic preservation, including the Advisory Council on Historic Preservation (ACHP), participate in the Cultural Resources Work Group. DWR included the draft Historic Properties Management Plans as part of the application. Draft and final programmatic agreements should be filed in September 2005 and January 2007, respectively.
Americans with Disabilities Act (ADA)	Access needs of the disabled and ADA standards were addressed in the collaborative process. As public facilities are updated, expanded, or newly developed, ADA issues will be addressed.

**Table A-3. Relicensing compliance.**

<b>Regulation/ Requirement</b>	<b>Compliance Status</b>
Clean Water Act Section 303(d) Total Maximum Daily Load (TMDL)	The lower Feather River is identified on the SWRCB's most recent 303(d) list as being impaired by the pesticide diazinon, Group A. The TMDL has been developed for the control of pesticides (i.e., organochlorine pesticides), mercury, and unknown toxicity (State Water Resources Control Board 2003). The TMDL for control of diazinon was recently prepared and is designed to control diazinon primarily from agricultural operations (Central Valley RWQCB 2003). TMDL development programs have not been established yet for the other listed contaminants of concern.
Clean Water Act Section 402 National Pollutant Discharge Elimination System (NPDES) Permit Compliance	The most applicable NPDES permit for the anticipated activities associated with the Oroville Facilities is the Statewide stormwater permit for general construction activity (SWRCB Order 99-08-DWQ, as amended) that applies to all construction projects that disturb greater than 1 acre of land. The construction activity permit requires filing a Notice of Intent with the SWRCB and preparation of a storm water pollution prevention plan.
Clean Water Act Section 404 Dredge and Fill	Implementation of PM&E measures that require Section 404 permits, and associated Section 401 water quality compliance from the Central Valley Regional Water Quality Control Board, are likely to occur at some point in time following submission of the license application, and may be identified for completion several years in the future. Engineering designs, environmental reviews, and plans are required for these regulatory agency reviews and permit processes to proceed.
California Fish and Game Code— Section 1600 (Streambed Alteration)	DWR has been in contact with DFG throughout the Oroville Facilities FERC relicensing process, and will obtain all necessary permits in compliance with California Fish and Game Code Section 1600.
California Fish and Game Code Section 5937 (Flows Below Dams)	DWR is expected to continue to operate Oroville Dam in a manner consistent with Section 5937 of the California Fish and Game Code.
California Fish and Game Code Sections 5980– 5993 (Fish Screening)	DWR is expected to continue compliance with Sections 5980–5993.
California Endangered Species Act (CESA) (Fish and Game Code Sections 2050– 2116)	The Oroville Facilities have the potential to affect species listed under CESA. DWR is expected to consult with DFG and obtain appropriate authorization in accordance with Section 2081 of CESA.
State Water Project (SWP) Authorization (Burns-Porter Act)	DWR, as the State agency responsible for management of the SWP, manages operation, maintenance, renewals and replacements, and power purchases necessary for the ongoing operation of the Oroville Facilities, under this authorization.



**Table A-3. Relicensing compliance.**

Regulation/ Requirement	Compliance Status
State Water Code Sections 11900–11901 (Implementing the Davis-Dolwig Act)	DWR implements the provisions of this act in accordance with Agency Order No. 6, dated March 13, 1963, and in coordination with other departments of the State of California, including the California Department of Parks and Recreation and DFG.
Fish and Wildlife Coordination Act (16 United States Code [USC] 661 et seq.)	Reports and recommendations of the fish and wildlife agencies are to be included in any authorizing documents for construction or for modification of projects. The decision to adopt fish and wildlife agency recommendations presented in association with the Oroville Facilities relicensing rests with FERC.
Magnuson-Stevens Fishery Conservation and Management Act	It is anticipated that NOAA Fisheries will provide its essential fish habitat (EFH) conservation recommendations coincident with its BO.
Migratory Bird Treaty Act of 1972	Migratory game birds and birds of prey including members of the families Tytonidae (barn owls), Strigidae (typical owls), Acciptridae (kites, eagles, hawks), and Falconidae (caracaras and falcons) are protected under this act. Disturbance during the breeding season could result in the incidental loss of fertile eggs or nestling, or otherwise lead to nest abandonment.
U.S. Army Corps of Engineers (USACE) Flood Storage Requirements under Flood Control Act of 1944 (Act of Congress, Public Law 78-534, 58 Stat. 890)	Flood control releases are based on the release schedule in the flood control diagram or the emergency spillway release diagram prepared by USACE, whichever requires the greater release. Decisions regarding such releases are made in consultation with USACE.
Executive Order 11988 (Protection of Floodplains), 1977	DWR has reviewed development plans with all agencies having jurisdiction to avoid to the extent possible any long- and short-term adverse effects associated with the occupancy and modification of floodplains. Goals are to reduce the risk of flood loss; to minimize the impact of floods on human safety, health and welfare; and to restore and preserve the natural and beneficial values served by floodplains. DWR shall also provide an opportunity for early public review of any plans or proposals for actions in floodplains.
Executive Order 11990 (Protection Of Wetlands), 1977	DWR has reviewed development plans with each agency having jurisdiction over federal lands, regarding activities and programs affecting land use, including water and related land resource planning, regulating, and licensing activities. The goal is to ensure that actions taken will minimize the destruction, loss, or degradation of wetlands, while preserving and enhancing the natural and beneficial values of wetlands. DWR has provided an opportunity for early public review of any plans or proposals for actions affecting wetlands. This order does not apply to private parties for activities involving wetlands on nonfederal property.

**Table A-3. Relicensing compliance.**

<b>Regulation/ Requirement</b>	<b>Compliance Status</b>
Executive Order 12898 (Environmental Justice for Low Income and Minority Populations), 1994	DWR has met with all agencies having jurisdiction. The goal is twofold: (1) to identify and address, as appropriate, disproportionately high and adverse human health, environmental, economic and social effects of its programs, policies, and activities on minority populations and low-income populations; and (2) to ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
Federal Land Policy and Management Act of 1976	DWR has reviewed development plans with each agency having jurisdiction to ensure that public lands shall continue to be managed in a manner that will provide protection of lands in accordance with this act.
American Indian Religious Freedom Act of 1978	In collaboration with the Cultural Resources Work Group, DWR has initiated an ethnographic and ethnohistoric study into areas of sacred and traditional concern to the local Native American community, and has been consulting with local Maidu tribes on behalf of FERC.
Antiquities Act of 1906	BLM and USFS have been involved with DWR throughout the collaborative process. Before conducting archaeological excavations on these federal lands, DWR would ensure that the proper permits were obtained.
Archaeological Resources Protection Act (ARPA) of 1979	BLM and USFS have been involved with DWR throughout the collaborative process, and would issue ARPA permits before archaeological excavations or the collection of archaeological materials from federal lands
Wild and Scenic Rivers Act	The Middle Fork Feather River component of the National Wild and Scenic Rivers System is to be administered by the Secretary of Agriculture. The Middle Fork Feather River was one of the nine original rivers designated under the act in 1968. The designation includes the entire Middle Fork downstream of the confluence of its tributary streams 1 kilometer south of Beckwourth, California. The designated reach of the Middle Fork Feather River is not affected by Oroville Facilities operations.
CEQA	DWR officially initiated the CEQA process in the September 20, 2002, "Final NEPA Scoping Document 1 and CEQA Notice of Preparation," and the January 6, 2003, "NEPA Scoping Document 2 and Amended CEQA Notice of Preparation." These two documents indicate that DWR has combined the NEPA and CEQA processes, using the scoping documents, meetings, study results, and documentation to satisfy the consultation and reporting requirements of both processes. The CEQA EIR will be prepared following submittal of the license application to FERC.

Source: DWR

## A.1 REFERENCES CITED

Central Valley RWQCB (Central Valley Regional Water Quality Control Board). 2003. Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Orchard Pesticide Runoff and Diazinon Runoff into the Sacramento and Feather Rivers. Final Staff Report. Sacramento, California. October 2003.

State Water Resources Control Board. 2003. 2002 Clean Water Act Section 303(d)  
List of Water Quality Limited Segments. Sacramento, California. July 2003.

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